

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

HEATHER MAE THOMAS,

Plaintiff,

v.

No. 1:24-cv-00123-KK

ALEXANDRA C. NARANJO,
DANIELLE VALDEZ,
MARY CARMACK-ALTWIES,
FNU TRUJILLO,
FNU CHAMA,
FNU LUJAN, and
FNU ARCHULETA,

Defendants.

MEMORANDUM OPINION AND ORDER FOR AMENDED COMPLAINT
AND ORDER TO CURE DEFICIENCY

Plaintiff, who is proceeding *pro se*, filed her Complaint using the form “Complaint for Violation of Civil Rights (Prisoner Complaint).” Doc. 1, filed February 7, 2024 (“Complaint”). Where the form Complaint prompts plaintiffs to describe the events giving rise to their claims and to state the facts underlying their claims, Plaintiff wrote: “Illegal warrant. Failed to clear. Impede my travel. Assault. Kidnap. . . Southbound travel, also from home . . . ASSAULT. KIDNAP. DETENTION. Property damage to automobile window to detain me.” Complaint at 4-5 (emphasis in original). Where the form Complaint prompts plaintiffs to identify the rights plaintiffs are claiming were violated, Plaintiff wrote:

My right to due process. My right to travel. I was assaulted, kidnapped and falsely imprisoned “Bill of Rights” . . . My “Bill of Rights[:])” my right to due process my right to travel and Title 42, Title 18 U.S.C.A., Title 28 U.S.C.A & additional NM constitution penal codes[,]) 18 USCA 241 & 242[,]) unnecessary Restraint, Attempted Coercion Unfounded Accusations, Unlawful Detention Destruction, Deprivation, Defacing

Complaint at 3-4.

The Complaint should be dismissed for failure to state a claim upon which relief can be granted. “[T]o state a claim in federal court, a complaint must explain what each defendant did to him or her; when the defendant did it; how the defendant’s action harmed him or her; and, what specific legal right the plaintiff believes the defendant violated.” *Nasious v. Two Unknown B.I.C.E. Agents, at Arapahoe County Justice Center*, 492 F.3d 1158, 1163 (10th Cir. 2007). There are no allegations in the Complaint describing what each Defendant did to Plaintiff.

While the Complaint can be dismissed for failure to state a claim, it is not obvious that it would be futile to give Plaintiff an opportunity to amend. The Court grants Plaintiff leave to file an amended complaint.

Plaintiff attached several documents to her Complaint. The Court will not review the attachments to a complaint to determine whether Plaintiff can state a claim upon which relief can be granted. *See Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 672 (10th Cir. 1998) (“we, like the district courts, have a limited and neutral role in the adversarial process, and are wary of becoming advocates who comb the record of previously available evidence and make a party’s case for it”); *Biogenics, Inc. v. Kazen*, 6 Fed.Appx. 689, 692 (10th Cir. 2001) (“Despite the liberal construction afforded pro se litigants, the court will not construct arguments or theories for a pro se litigant.”). Any information in the attachments that form a basis for Plaintiff’s claims must be set forth in allegations in an amended complaint. The Court may consider the documents attached to the Complaint or amended complaint at a later stage in this case in accordance with the Federal Rules of Civil Procedure and the Federal Rules of Evidence.

Order to Cure Deficiency

Federal law requires that the Clerk of Court "require the parties instituting any civil action, suit or proceeding in such court ... to pay a filing fee of \$350 ... [and] such additional fees only as are prescribed by the Judicial Conference of the United States." 28 U.S.C. §§ 1914(a, b).¹ The Court "may authorize the commencement, prosecution or defense of any suit, action or proceeding civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such [person] possesses that the person is unable to pay such fees or give security therefor." 28 U.S.C. § 1915(a)(1).

Plaintiff has not paid the \$405.00 fee or filed an Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form). The Court orders Plaintiff to either pay the fee or file an Application. The Clerk's Office mailed a form "Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form)" to Plaintiff on February 7, 2024.

Case Management

Generally, *pro se* litigants are held to the same standards of professional responsibility as trained attorneys. It is a *pro se* litigant's responsibility to become familiar with and to comply with the *Federal Rules of Civil Procedure* and the *Local Rules of the United States District Court for the District of New Mexico* (the "Local Rules").

Guide for Pro Se Litigants at 4, United States District Court, District of New Mexico (October 2022). The Local Rules, the Guide for Pro Se Litigants and a link to the Federal Rules of Civil Procedure are available on the Court's website: <http://www.nmd.uscourts.gov>.

¹ The fee for instituting any civil action, suit or proceeding is comprised of a \$350.00 filing fee, see 28 U.S.C. §1914, and a \$55.00 administrative fee.

Compliance with Rule 11

The Court reminds Plaintiff of her obligations pursuant to Rule 11 of the Federal Rules of Civil Procedure. *See Yang v. Archuleta*, 525 F.3d 925, 927 n. 1 (10th Cir. 2008) (“*Pro se* status does not excuse the obligation of any litigant to comply with the fundamental requirements of the Federal Rules of Civil and Appellate Procedure.”). Rule 11(b) provides:

Representations to the Court. By presenting to the court a pleading, written motion, or other paper--whether by signing, filing, submitting, or later advocating it--an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
- (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

Fed. R. Civ. P. 11(b). Failure to comply with the requirements of Rule 11 may subject Plaintiff to sanctions, including monetary penalties and nonmonetary directives. *See* Fed. R. Civ. P. 11(c).

IT IS ORDERED that:

- (i) Plaintiff shall, within 21 days of entry of this Order, file an amended complaint.
Failure to timely file an amended complaint may result in dismissal of this case.
- (ii) Plaintiff shall, within 21 days of entry of this Order, either pay the \$405.00 fee or file an Application to Proceed in District Court Without Prepaying Fees or Costs

(Long Form). Failure to timely pay the \$405.00 fee or file an Application may result in dismissal of this case.



KIRTAN KHALSA
UNITED STATES MAGISTRATE JUDGE